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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/781,703	02/20/2004	Edward R. Howorka	E3331.0629	4196

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Dickstein Shapiro Morin & Oshinsky LLP
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EXAMINER

LEMIEUX, JESSICA

ART UNIT	PAPER NUMBER
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3693

MAIL DATE	DELIVERY MODE
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08/05/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/781,703

Applicant(s)

HOWORKA ET AL.

Examiner

JESSICA L. LEMIEUX

Art Unit

3693

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 May 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-37 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SI/309)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. This Non-Final Office action is in response to the application filed on February 20th, 2004 and in response to the applicant's arguments/amendments filed on May 8th, 2009. Claims 1-37 are pending.

Continued Examination Under 37 CFR 1.114

2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on May 8th, 2009 has been entered.

Response to Arguments

3. Applicant states that the prior art "doesn't disclose/etc." Examiner notes that these arguments are made with respect to the amended claims. Examiner disagrees with the applicant's conclusion that the pending claims as amended are in condition for allowance, as the amended claims have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claims 11-19 and 27-37 are rejected under 35 U.S.C. 101 because the claimed invention is not directed to a secondary statutory subject matter/class.

Based on Supreme Court precedent and recent Federal Circuit decisions, the Office's guidance to examiners is that a § 101 process must be (1) tied to another statutory class (such as a particular apparatus) or (2) transform underlying subject matter (such as an article or materials) to a different state or thing. If neither of these requirements is met by the claim, the method is not a patent eligible process under § 101 and should be rejected as being directed to non-statutory subject matter. Merely having "another statutory class" in the preamble and not in the body of the claim is also not sufficient to render the claim statutory.

An example of a method claim that would not qualify as a statutory process would be a claim that recited purely mental steps. Thus, to qualify as a § 101 statutory process, the claim should positively recite the other statutory class (the thing or product) to which it is tied, for example by identifying the apparatus that accomplishes the method steps, or positively recite the subject matter that is being transformed, for example by identifying the material that is being changed to a different state.

Here, applicant's method steps fail the first prong of the new Federal Circuit decision since they are not tied to a machine and can be performed without the use of a particular machine. In this particular case, claims 11-19 and 27-37 are not tied to another statutory class, such as hardware. Thus, it is unclear as to whether or not the claims are mere processes that involve purely human labor.

Appropriate correction is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-5, 9-16, 19-23, 26-32 and 36-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent Number 5,806,050 to Shinn et al. (hereinafter Shinn) in view of US Patent Application Number 2002/0091623 to Daniels (hereinafter Daniels) further in view of US Patent Application Number 2002/0076048 to Hars (hereinafter Hars) further in view of Official Notice.

As per claims 1, 11, 20, 27 and 37

Shinn discloses a plurality of trading floors each having a plurality of trader workstation, and a distributor for distributing to the trader workstations data related to one or more instruments being traded on the system, at least a portion of the data being audibly announced at the trader workstations (abstract). Shinn does teach that trading information that is displayed to traders can also be vocalized (abstract).

Shinn does not specifically teach a trading floor identifier unique to each trading floor is also audibly announced to each trading floor however, Shinn does teach that trading information that is displayed to traders can also be vocalized (abstract).

Daniels teaches displaying a unique trade identifier to traders (page 5, paragraphs [0081-0082]). Applicants admitted prior art teaches the unique identifier may identify an individual trader or trading floor, and that trading floor identifier is universally adopted in the financial trading industry (page 1, paragraph [0010], lines 4-6). Therefore, it would have been obvious to one skilled in the art at the time of invention that the unique trade identifier that Daniels teaches could be the trading floor identifier and could be vocalized by Shinn by combining prior art elements according to known methods.

Examiner further notes that the teaching reference Hars discloses making an audible announcement (insert a disruption, i.e. filler) to protect recordings from illicit or

illegal processing, i.e. reproduction, transmission, playback (page 2, paragraph [0024] and page 3, paragraphs [0036-0037]). Examiner further notes that use of the previous invention Shinn was as Applicants admit "discontinued when it was found that traders were passing market price data vocalized by the trading system to their clients." Therefore, it was well known in the art at the time of invention, the reason that the invention by Shinn was no longer used was that traders were passing market price data to their clients (illicit reproduction, transmission, and/or playback). Examiner further notes that although the fillers used with Hars could be a hum and variations in sound level, Hars also teaches that they could be an advertisement, or other filler.

Official Notice is taken that it is old and well known that a filler could be the source of the digital recording (mp3's having breaks in the song saying the source of the download and the rest of the content can be heard).

Therefore it would have been obvious to one skilled in the art at the time of invention to modify the trading system of Shinn to include an audible announcement of an identifier as taught by Daniels to avoid illicit communication of data as further taught by Hars by applying a known technique to known art ready for improvement.

As per claims 2, 12, 21 and 28

Examiner notes that the combination of Shinn, Daniels and Hars teach all the claimed limitations, as discussed with respect to claim 1 above however Shinn, Daniels and Hars do not specifically teach the trading floor identifier is announced at random/irregular intervals.

Official Notice is taken that it is old and well known to make announcements at random/irregular intervals. Therefore it would have been obvious to one skilled in the art at the time of invention to modify the trading announcement of Shinn to include announcing the trading floor identifier at random/irregular intervals. One would have been motivated to make random/irregular announcements to avoid the illicit communication of data.

As per claims 3, 13, 22 and 29

Examiner notes that the combination of Shinn, Daniels and Hars teach all the claimed limitations, as discussed with respect to claim 1 above however Shinn, Daniels and Hars do not specifically teach the trading floor identifier is announced at random intervals with a predetermined number of announcements being made over a given time period.

Official Notice is taken that it is old and well known to make announcements at random intervals with a predetermined number of announcements being made over a given time period. Therefore it would have been obvious to one skilled in the art at the time of invention to modify the trading announcement of Shinn to include making announcements at random intervals with a predetermined number of announcements being made over a given time period to make sure that enough announcements are made in order to avoid the illicit communication of data.

As per claims 4, 14 and 30

Examiner notes that the combination of Shinn, Daniels and Hars teach all the claimed limitations, as discussed with respect to claim 1 above however Shinn, Daniels and Hars do not specifically teach two announcements of the trading floor identifier are made each hour.

Official Notice is taken that it is old and well known to make two announcements of the trading floor identifier each hour. Examiner notes that Shinn teaches at many announcements are made each hour, therefore it is obvious that at least two announcements are made each hour with respect to the trading floor identifier. Therefore it would have been obvious to one skilled in the art at the time of invention to modify the trading announcement of Shinn to include making two announcements of the trading floor identifier each hour to make sure that enough announcements are made in order to avoid the illicit communication of data.

As per claims 5 and 16

Shinn, Daniels and Hars do not specifically teach the trading floor identifier comprises a four letter trading floor code.

Applicants admitted prior art teaches the trading floor identifier comprises a four letter trading floor code (page 1, paragraph [0010], lines 4-6).

Therefore it would have been obvious to one skilled in the art at the time of invention to modify the trading floor identifier of Daniels to be comprised of a four letter trading floor code as disclosed by applicant's admitted prior art as it's old and well-known in the financial trading industry.

As per claim 9

Examiner notes that the combination of Shinn, Daniels and Hars teach all the claimed limitations, as discussed with respect to claim 1 above and Shinn further discloses a first voice store for storing a vocalization of at least a portion of the trading floor identifier (column 3, line 61- column 4, line 7).

As per claim 10

Examiner notes that the combination of Shinn, Daniels and Hars teach all the claimed limitations, as discussed with respect to claim 1 above and Shinn further discloses a second voice store for storing a vocalization portion of the trading floor identifier, the stored vocalization having a different intonation from the vocalization stored in the first voice store (column 3, line 61- column 4, line 7).

As per claims 15 and 31

Examiner notes that the combination of Shinn, Daniels and Hars teach all the claimed limitations, as discussed with respect to claim 1 above and Hars further discloses the trading floor identifier is announced when a trader workstation on that trading floor logs onto the trading system (page 2, paragraph [0024] and page 3, paragraph [0037]). Examiner notes that upon logging into the workstation the transmission of the information commences and therefore, inserting a disruption, or

trading floor identifier to be announced would help protect recordings from illicit or illegal processing.

Therefore it would have been obvious to one skilled in the art at the time of invention to modify the trading system of Shinn to include that the trading floor identifier is announced when a trader workstation on that trading floor logs onto the trading system as taught by Hars since it would help to avoid illicit communication of data by making the listener aware of the source of the information initially.

As per claims 19, 26 and 36

Examiner notes that the combination of Shinn, Daniels and Hars teach all the claimed limitations, as discussed with respect to claims 11, 20 and 27 above and Shinn further discloses a recorded message (column 3, line 61- column 4, line 7).

As per claims 23 and 32

Shinn, Daniels and Hars do not specifically teach the identifier is a series of characters.

Applicants admitted prior art teaches the identifier is a series of characters (page 1, paragraph [0010], lines 4-6).

Therefore it would have been obvious to one skilled in the art at the time of invention to modify the trading floor identifier of Daniels to include that the identifier is a series of characters as disclosed by applicant's admitted prior art as it's old and well-known in the financial trading industry.

6. Claims 6, 17, 24 and 33-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent Number 5,806,050 to Shinn et al. (hereinafter Shinn) in view of US Patent Application Number 2002/0091623 to Daniels (hereinafter Daniels) in view of US Patent Application Number 2002/0076048 to Hars (hereinafter Hars) in view of Official Notice and further in view of US Patent Number 5,212,731 to Zimmermann (hereinafter Zimmermann).

As per claims 6, 17, 24 and 34

Shinn, Daniels and Hars do not specifically teach the intonation of the last letter of the four letter trading floor code is upwards.

Zimmerman teaches the intonation of the last letter is upwards (abstract, lines 16-18).

Therefore it would have been obvious to one skilled in the art at the time of invention to modify the trading floor code of Daniels to include the intonation of the last letter of the four letter trading floor code is upwards as taught by Zimmerman to signal completion.

As per claim 33

Shinn, Daniels and Hars do not specifically teach the intonation of the final character is different from the intonation of the other characters.

Zimmerman teaches the intonation of the final character is different from the intonation of the other characters (abstract, lines 16-18).

Therefore it would have been obvious to one skilled in the art at the time of invention to modify the trading floor code of Daniels to include the intonation of the final character is different from the intonation of the other characters as taught by Zimmerman to signal completion.

7. Claims 7-8, 18, 25 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent Number 5,806,050 to Shinn et al. (hereinafter Shinn) in view of US Patent Application Number 2002/0091623 to Daniels (hereinafter Daniels) in view of US Patent Application Number 2002/0076048 to Hars (hereinafter Hars) in view of Official Notice further in view of US Patent Number 6,574,600 to Fishman et al (hereinafter Fishman).

As per claim 7

Shinn, Daniels and Hars do not specifically teach a first voice synthesizer for synthesizing at least a portion of the trading floor identifiers.

Fishman teaches a first voice synthesizer for synthesizing at least a portion of the trading floor identifiers (column 3, lines 31-41).

Therefore it would have been obvious to one skilled in the art at the time of invention to modify the trading vocalization of Shinn to include a first voice synthesizer for synthesizing at least a portion of the trading floor identifiers as taught by Fishman as a well-known substitute for pre-recorded audio as a means of data delivery for converting data into verbal comments/tones.

As per claim 8

Examiner notes that the combination of Shinn, Daniels and Hars teach all the claimed limitations, as discussed with respect to claim 1 above and Shinn further discloses a second voice store for storing a vocalization portion of the trading floor identifier, the stored vocalization having a different intonation from the vocalization stored in the first voice store (column 3, line 61- column 4, line 7).

Shinn, Daniels and Hars do not specifically teach a voice synthesizer for synthesizing a portion of the trading floor identifier.

Fishman teaches a voice synthesizer for synthesizing a portion of the trading floor identifier (column 3, lines 31-41).

Therefore it would have been obvious to one skilled in the art at the time of invention to modify the trading vocalization of Shinn to include a voice synthesizer for synthesizing a portion of the trading floor identifier as taught by Fishman as a means of data delivery for converting data into different verbal comments/intonations.

As per claims 18, 25 and 35

Shinn, Daniels and Hars do not specifically teach a synthesized voice.

Fishman teaches a synthesized voice (column 3, lines 31-41).

Therefore it would have been obvious to one skilled in the art at the time of invention to modify the trading vocalization of Shinn to include a synthesized voice as taught by Fishman as a well-known substitute for pre-recorded audio as a means of data delivery for converting data into verbal comments/tones.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JESSICA L. LEMIEUX whose telephone number is (571)270-3445. The examiner can normally be reached on Monday-Thursday 8AM-5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Kramer can be reached on 571-272-6783. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/James A. Kramer/
Supervisory Patent Examiner, Art Unit 3693

Jessica L Lemieux
Examiner
Art Unit 3693

July 2009
/J. L. L./
Examiner, Art Unit 3693